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No. 85-1039

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

KENNETH B. QUANSAH,
Petitioner,
vs.
JIM BUTLER & CO. and JIM BUTLER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Do the Federal Courts have jurisidiction in this matter, that is,

1. Can federal diversity jurisdiction be argued where plaintiff and defendant are both residents of the same state?

2. Can a motor vehicle accident, between a car and an interstate carrier on a freeway which is part of the national highway system, give rise to federal jurisdiction as a "regulation of commerce" under the Commerce Clause of the United States Constitution?

3. Can a motor vehicle accident on a freeway which is part of the national highway system provide a ground for maritime jurisdiction?

4. Can claims for damages, without allegations of discrimination, invoke federal jurisdiction under 42 U.S.C. §§ 1981 and 1985(3) and under the Thirteenth Amendment?

5. Can claims for damages, concerning uniquely the acts of private individuals, with no participation by any government official, invoke federal jurisdiction under 42 U.S.C. section 1983 and the Due Process Clause of the Fourteenth Amendment?

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RESPONDENTS' BRIEF IN OPPOSITION

The respondents Jim Butler & Co. and Jim Butler, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's opinion in this case. That unpublished opinion appears as Appendix 3 to petitioner's Petition for a Writ of Certiorari.

REASONS WHY THE WRIT SHOULD BE DENIED

A. Since there is no diversity of citizenship there is no diversity jurisdiction under 28 U.S.C. § 1332.

All parties to this suit are California citizens for the purposes of the diversity statute.

Petitioner submits that respondents "had a California business office" [Petition, page 5, line 18], and that petitioner was living and working in California at the time of the incident [Petition, page 13, lines 10-12]. Petitioner alleges neither non-California citizenship for himself, nor non-California principal place of

business and citizenship for respondents. There is no diversity jurisdiction since all plaintiffs must have state citizenship different from those of all defendants. *Strawbridge v. Curtiss,* 3 Cranch 267, 2 L. Ed. 435 (1806).

B. There is no federal subject matter jurisdiction since no federal question is posed.

1. *A motor vehicle accident is not a "regulation of commerce" under the Commerce Clause, Article I, § 8, of the Constitution.*

This matter has nothing to do with the regulation of commerce, nor does petitioner make any such allegation.

The domain of the Commerce Clause is not private acts of commerce, but rather the regulation of commerce by federal or state government. *Gibbons v. Ogden,* 9 Wheat. 1, 6 L. Ed. 23 (1824).

2. *This motor vehicle accident on a freeway does not involve maritime activity under 28 U.S.C. § 1333.*

Petitioner was not involved in a "traditional maritime activity", nor does he allege he was.

There is no maritime jurisdiction without traditional maritime activity. *Executive Jet Aviation, Inc. v. City of Cleveland,* 409 U.S. 246, 272, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972).

3. *Without an allegation of discrimination, petitioner's claim is not cognizable under 42 U.S.C. § 1981 or 1985(3).*

Petitioner was not the object of any discrimination, nor does he make any such allegation.

Section 1981 prohibits discriminatory restriction of priviate contract rights, perhaps including bias in the enforcement of third party rights under a liability insurance policy. However, the limit of federal cognizance of such private action is clearly defined: Any claim under the related § 1985(3), and, by extension, under section 1981, must contain an allegation of "invidious discriminatory animus". *Griffin v. Breckenridge,* 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971).

4. *Since there was no participation by any governmental actor, petitioner's claim is not cognizable under 42 U.S.C. section 1983 and the Due Process Clause of the Fourteenth Amendment.*

The actions of which petitioner complains were uniquely private actions, and petitioner does not allege any participation by a government official.

For an act to be performed "under color of state law", not only must it be performed under governmental rules, but it must also include the active participation of a governmental actor. *Flagg Brothers, Inc. v. Brooks,* 436 U.S. 149, 163, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978).

CONCLUSION

For these reasons, petitioner fails effectively to plead federal jurisdiction, and his petition for writ of certiorari should be denied.

Respectfully submitted,

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